

107TH CONGRESS  
1ST SESSION

# S. 1103

To amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 26, 2001

Mr. ROCKEFELLER (for himself, Mr. DORGAN, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49,**  
4       **UNITED STATES CODE.**

5       (a) SHORT TITLE.—This Act may be cited as the  
6       “Railroad Competition Act of 2001”.

1 (b) AMENDMENT OF TITLE 49, UNITED STATES  
2 CODE.—Except as otherwise expressly provided, whenever  
3 in this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or a repeal of, a section or other  
5 provision, the reference shall be considered to be made to  
6 a section or other provision of title 49, United States  
7 Code.

8 **SEC. 2. PURPOSES.**

9 The purposes of this Act are as follows:

10 (1) To clarify the rail transportation policy of  
11 the United States by requiring the Surface Trans-  
12 portation Board to accord greater weight to the need  
13 for increased competition between and among rail  
14 carriers and consistent and efficient rail service in  
15 its decisionmaking.

16 (2) To eliminate unreasonable barriers to com-  
17 petition among rail carriers serving the same geo-  
18 graphic areas.

19 (3) To ensure reasonable rail rates for captive  
20 rail shippers by removing unnecessary regulatory  
21 burdens from the rate reasonableness procedures of  
22 the Surface Transportation Board.

1     **TITLE I—INCREASED RAIL-TO-**  
2             **RAIL COMPETITION**

3     **SEC. 101. FOSTERING OF RAIL-TO-RAIL COMPETITION.**

4         Section 11101(a) is amended—

5             (1) by inserting “(1)” after “(a)”; and

6             (2) by striking “A rail carrier” at the beginning  
7         of the second sentence and inserting the following:

8         “(2) Upon the request of a shipper, a rail carrier  
9         shall establish a rate for transportation and provide serv-  
10        ice requested by the shipper between any two points on  
11        the system of that carrier where traffic originates, termi-  
12        nates, or may reasonably be interchanged. A carrier shall  
13        establish a rate and provide service upon such request  
14        without regard to—

15             “(A) the location of the movement on the rail  
16         system, including terminal areas;

17             “(B) whether the rate established is for only  
18         part of a movement between a point of origin and  
19         a destination;

20             “(C) whether the shipper has made arrange-  
21         ments for transportation for any other part of that  
22         movement; or

23             “(D) whether the shipper has a contract with  
24         any rail carrier for part or all of its transportation  
25         needs over the route of movement, in which case the

1 rate established by the carrier shall not apply to  
 2 transportation covered by the contract.

3 “(3) A rail carrier”.

4 **SEC. 102. PROMOTION OF COMPETITIVE RAIL SERVICE OP-**  
 5 **TIONS.**

6 (a) APPROVALS OF COMBINATIONS.—Section 11324  
 7 is amended—

8 (1) in subsection (b)—

9 (A) by striking “and” at the end of para-  
 10 graph (4);

11 (B) by striking the period at the end of  
 12 paragraph (5) and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(6) means and methods to encourage and ex-  
 15 pand competition between and among rail carriers in  
 16 the region affected by the transaction or in the na-  
 17 tional rail system.”; and

18 (2) in subsection (c), by inserting after the first  
 19 sentence the following: “The Board shall impose any  
 20 conditions that the Board considers appropriate to  
 21 encourage and expand competition between and  
 22 among rail carriers in the region affected by the  
 23 transaction or in the national rail system.”.

24 (b) APPLICABILITY.—The amendments made by this  
 25 section shall apply with respect to proceedings of the Sur-

1 face Transportation Board that are initiated on or after  
 2 the effective date specified in section 401.

3 **SEC. 103. COMPETITIVE RAIL SERVICE IN TERMINAL**  
 4 **AREAS.**

5 (a) USE OF TERMINAL AREAS.—Section 11102(a) is  
 6 amended—

7 (1) by inserting “(1)” after “(a)”;

8 (2) by striking “may” in the first sentence and  
 9 inserting “shall”;

10 (3) by inserting after the first sentence the fol-  
 11 lowing: “In making any determination for the pur-  
 12 poses of the preceding sentence, the Board may not  
 13 require evidence of anticompetitive conduct by a rail  
 14 carrier from which access is sought.”;

15 (4) by striking “The rail carriers” at the begin-  
 16 ning of the sentence following the sentence inserted  
 17 by paragraph (3) and inserting the following:

18 “(2) The rail carriers”; and

19 (5) by striking “may establish conditions” in  
 20 the penultimate sentence and inserting “shall estab-  
 21 lish conditions”.

22 (b) RECIPROCAL SWITCHING.—Section 11102(c) is  
 23 amended—

24 (1) in paragraph (1)—

1 (A) by striking “may require” in the first  
 2 sentence and inserting “shall require”; and

3 (B) by striking “may establish” in the last  
 4 sentence and inserting “shall establish”; and

5 (2) by adding at the end the following new  
 6 paragraph:

7 “(3) In making any determination for the purposes  
 8 of the first sentence of paragraph (1), the Board may not  
 9 require evidence of anticompetitive conduct by a rail car-  
 10 rier from which access is sought.”.

11 **TITLE II—IMPROVEMENTS IN**  
 12 **THE RATE REASONABLENESS**  
 13 **PROCESS OF THE SURFACE**  
 14 **TRANSPORTATION BOARD**

15 **SEC. 201. FILING FEES.**

16 Section 721 is amended by adding at the end the fol-  
 17 lowing new subsection:

18 “(f) LIMITATION ON FEES.—The Board may not  
 19 charge a fee for the filing of a complaint, protest, or other  
 20 request for relief in an amount greater than fees charged  
 21 by district courts of the United States for a comparable  
 22 filing.”.

1 **SEC. 202. SIMPLIFIED STANDARDS FOR MARKET DOMI-**  
 2 **NANCE DETERMINATIONS.**

3 Section 10707 is amended by adding at the end the  
 4 following new subsection:

5 “(e) The Board may not consider evidence of product  
 6 or geographic competition in making a market dominance  
 7 determination under this section.”.

8 **SEC. 203. REVIEW OF RATES.**

9 (a) REASONABLENESS.—Section 10701(d) is amend-  
 10 ed by striking paragraph (3) and inserting the following:

11 “(3) Upon a challenge made by a shipper to the rea-  
 12 sonableness of any rate established by a rail carrier in ac-  
 13 cordance with subsection (c) or section 11101(a) of this  
 14 title, the Board shall determine the reasonableness of the  
 15 rate without regard to whether—

16 “(A) the rate is for only part of a movement be-  
 17 tween a point of origin and a destination;

18 “(B) the shipper has made arrangements for  
 19 transportation for any other part of that movement;  
 20 or

21 “(C) the shipper currently has a contract with  
 22 a rail carrier for any part of the rail traffic involved,  
 23 except that any rate prescribed by the Board shall  
 24 not apply to transportation covered by such a con-  
 25 tract.”.

26 (b) BURDEN OF PROOF.—

1           (1)    PROVING    REASONABLENESS.—Section  
2       10701(d), as amended by subsection (a), is further  
3       amended by adding at the end the following new  
4       paragraphs:

5       “(4) In the determining of whether a rate established  
6       by a rail carrier is reasonable for the purposes of this sub-  
7       section, the rail carrier shall have the burden of proving  
8       that the maximum rate set forth in the complainant’s evi-  
9       dence does not exceed the reasonable maximum rate.  
10      “(5) The sequence for the presentation of evidence  
11      by the complainant and the defendant that is provided  
12      under the rules of the Board governing the procedural  
13      schedule for cases under this subsection, as in effect on  
14      the date of the enactment of the Railroad Competition Act  
15      of 2001, shall apply in such cases.”.

16           (2) APPLICABILITY.—The amendment made by  
17       this section shall apply with respect to proceedings  
18       of the Surface Transportation Board that are initi-  
19       ated on or after the effective date specified in sec-  
20       tion 401.



1 **TITLE III—IMPROVEMENTS IN**  
2 **THE OVERSIGHT OF THE RAIL**  
3 **INDUSTRY AND IN THE OPER-**  
4 **ATION OF THE SURFACE**  
5 **TRANSPORTATION BOARD**

6 **SEC. 301. CLARIFICATION OF RAIL TRANSPORTATION POL-**  
7 **ICY.**

8 Section 10101 is amended—

9 (1) by inserting “(a) IN GENERAL.—” before  
10 “In regulating”; and

11 (2) by adding at the end the following:

12 “(b) PRIMARY OBJECTIVES.—The primary objectives  
13 of the rail transportation policy of the United States are  
14 as follows:

15 “(1) To ensure effective competition among rail  
16 carriers at origins and destinations.

17 “(2) To maintain reasonable rates in the ab-  
18 sence of effective competition.

19 “(3) To maintain consistent and efficient rail  
20 transportation service for shippers, including the  
21 timely provision of rail cars requested by shippers.

22 “(4) To ensure that smaller carload and inter-  
23 modal shippers are not precluded from accessing rail  
24 systems due to volume requirements.”.

1 **SEC. 302. ADEQUACY OF REVENUE.**

2 (a) REPEAL OF AUTHORITY TO ESTABLISH REV-  
 3 ENUE STANDARDS AND PROCEDURES.—Section 10704(a)  
 4 is amended by striking paragraphs (2) and (3).

5 (b) CONFORMING AMENDMENTS.—

6 (1) RAIL TRANSPORTATION POLICY.—Section  
 7 10101 is amended by striking “, as determined by  
 8 the Board” in paragraph (3) of subsection (a), as  
 9 designated by section 3(1).

10 (2) REASONABLENESS OF RATES.—Section  
 11 10701(d)(2) is amended by striking “, as established  
 12 by the Board under section 10704(a)(2) of this  
 13 title”.

14 (3) CLERICAL AMENDMENT.—Section 10704(a),  
 15 as amended by subsection (a), is further amended by  
 16 striking “(1)” after “(a)”.

17 **SEC. 303. ARBITRATION.**

18 (a) AUTHORITY.—Chapter 105 is amended by adding  
 19 at the end the following new section:

20 **“§ 10503. Arbitration of qualifying controversies**

21 “(a) AUTHORITY.—(1) Subject to subsection (b), dis-  
 22 puts subject to the statutory jurisdiction of the Board  
 23 that involve the reasonableness of rates or other charges  
 24 or the provision of service may be resolved under the alter-  
 25 native dispute resolution process prescribed by the Board  
 26 for the arbitration of such disputes upon the election of

1 a party filing with the Board a written complaint regard-  
2 ing the rates, charges, or service, as the case may be.

3 “(2) Discovery shall be authorized in a case sub-  
4 mitted to arbitration under this section if requested by a  
5 party to the arbitration.

6 “(b) DISPUTES INVOLVING RATES AND OTHER  
7 CHARGES.—In an arbitration of a dispute on a rate or  
8 other financial charge under the process applied under  
9 subsection (a), each party to the dispute shall submit to  
10 the arbitrator the party’s final proposal regarding what  
11 level of rate or charge is appropriate. All such proposals  
12 shall be submitted simultaneously. The arbitrator shall se-  
13 lect one of the submitted proposals, without modification,  
14 to be the arbitrator’s final decision on the disputed rate  
15 or charge.

16 “(c) JUDICIAL REVIEW.—(1) The district courts of  
17 the United States shall have jurisdiction to review the final  
18 decision of an arbitrator in a proceeding conducted under  
19 subsection (a).

20 “(2) An action for review of a final decision of an  
21 arbitrator referred to in paragraph (1) may be brought  
22 only in the district court of the United States for the dis-  
23 trict in which the party electing the arbitration under sub-  
24 section (a) has its principal place of business.

1       “(3) An action for review of the final decision of an  
2 arbitrator may not be commenced under this subsection  
3 more than 30 days after the date on which the arbitrator  
4 issues the decision.

5       “(4) In an action brought under this subsection for  
6 review of the decision of an arbitrator, the district court  
7 may—

8               “(A) vacate the decision on any ground set  
9 forth in section 10 of title 9; or

10              “(B) modify or correct the decision on any  
11 ground set forth in section 11 of title 9.”.

12       (b) CLERICAL AMENDMENT.—The table of sections  
13 at the beginning of such chapter is amended by adding  
14 at the end the following new item:

“10503. Arbitration of qualifying controversies.”.

15   **SEC. 304. RAIL CARRIER SERVICE QUALITY PERFORMANCE**  
16                               **REPORTS.**

17       (a) IN GENERAL.—Chapter 111 is amended by add-  
18 ing at the end of subchapter III the following new section:

19   **“§ 11146. Service quality reports**

20       “(a) MONTHLY REPORT OF CARRIERS.—(1) Regula-  
21 tions prescribed by the Secretary of Transportation shall  
22 require each rail carrier to submit to the Secretary a  
23 monthly report on the quality of the service provided by  
24 the rail carrier.

1       “(2) The report shall contain, for the month covered  
2 by the report, information about—

3               “(A) the carrier’s on-time performance;

4               “(B) the carrier’s car availability deadline per-  
5 formance;

6               “(C) the average speed at which the carrier’s  
7 trains were operated;

8               “(D) the average time that the carrier’s trains  
9 dwelled in terminals;

10              “(E) the number of the carrier’s cars that were  
11 loaded (expressed separately for each major com-  
12 modity group); and

13              “(F) any other aspects of the carrier’s perform-  
14 ance (as a rail carrier) that the Secretary may re-  
15 quire.

16       “(3) The information shall be set forth in the month-  
17 ly report in a uniform format prescribed by the Secretary.

18       “(b) AVAILABILITY OF MONTHLY REPORT TO BOARD  
19 AND PUBLIC.—(1) The Secretary shall furnish a copy of  
20 the monthly reports of rail carriers to the Surface Trans-  
21 portation Board not later than the next business day fol-  
22 lowing receipt by the Secretary.

23       “(2) The Secretary shall make the monthly reports  
24 of rail carriers available to the public.

1       “(c) ANNUAL REPORT TO CONGRESS.—The Sec-  
 2 retary shall transmit to Congress an annual report con-  
 3 taining a summary and discussion of the information in  
 4 the reports submitted under this section to the Secretary  
 5 for the months of the year covered by the annual report.”.

6       (b) CLERICAL AMENDMENT.—The table of sections  
 7 at the beginning of such chapter is amended by inserting  
 8 after the item relating to section 11145 the following:

“11146. Service quality reports.”.

9   **SEC. 305. PERIODIC STUDY OF COMPETITION AMONG RAIL**  
 10                           **CARRIERS.**

11       (a) REQUIREMENT FOR STUDY.—

12           (1) TRIENNIAL STUDY.—Chapter 101 is  
 13 amended by adding at the end the following new sec-  
 14 tion:

15   **“§ 10103. Periodic study of rail carrier competition**  
 16                           **and processes of the Surface Transpor-**  
 17                           **tation Board**

18       “(a) REQUIREMENT FOR STUDY.—Every three years,  
 19 the Secretary of Transportation shall conduct a com-  
 20 prehensive study of rail carrier competition and the proc-  
 21 esses of the Board. The study shall include an assessment  
 22 of the following:

23           “(1) The availability of effective competitive op-  
 24 tions among and between rail carriers.

1           “(2) The effectiveness of the processes of the  
2       Surface Transportation Board, including the process  
3       used for determining the reasonableness of rates of  
4       rail carriers.

5           “(3) The availability to rail users of effective  
6       regulatory dispute resolution options.

7       “(b) STUDY TO INCLUDE ASSESSMENT OF RAIL-TO-  
8       RAIL COMPETITION.—In carrying out the study, the  
9       Board shall assess the overall level of rail-to-rail competi-  
10      tion in the rail carrier industry in the United States. In  
11      making the assessment, the Board shall consider the views  
12      of users of the services of rail carriers.

13       “(c) REPORT TO CONGRESS.—Not later than Novem-  
14      ber 15 of each year in which a study is conducted under  
15      subsection (a), the Secretary shall submit a report on the  
16      results of the study to Congress. The report shall include  
17      the following:

18           “(1) The Board’s assessment of the overall level  
19       of rail-to-rail competition in the rail carrier industry  
20       in the United States.

21           “(2) The markets that have limited rail-to-rail  
22       competition.

23           “(3) Any recommendations for enhancing rail-  
24       to-rail competition, particularly in markets identified  
25       as having limited rail-to-rail competition.

1           “(4) An assessment of the Board’s performance  
 2           of its purpose to promote and enhance competition  
 3           among and between railroads by—

4                   “(A) addressing complaints regarding rates  
 5                   and service; and

6                   “(B) promulgating regulations of general  
 7                   applicability or taking other actions.

8           “(5) Any recommendations for modification of  
 9           any of the decisions of the Surface Transportation  
 10          Board (or decisions of the former Interstate Com-  
 11          merce Commission continuing in effect) or for modi-  
 12          fication of the general authority or jurisdiction of  
 13          the Board.

14           “(6) Any other findings, analyses, assessments,  
 15           and recommendations that result from the study.”.

16           (2) CLERICAL AMENDMENT.—The table of sec-  
 17          tions at the beginning of such chapter is amended  
 18          by adding at the end the following:

“10103. Periodic study of rail carrier competition and processes of the Surface  
 Transportation Board.”.

19          (b) TIME FOR FIRST STUDY.—The first study under  
 20          section 10103 of title 49, United States Code (as added  
 21          by subsection (a)), shall be carried out not later than two  
 22          years after the effective date specified in section 401.



1       **TITLE IV—EFFECTIVE DATES**

2   **SEC. 401. EFFECTIVE DATE.**

3       Except as provided in section 402, this Act and the  
4   amendments made by this Act shall take effect on October  
5   1, 2001.

6   **SEC. 402. EXCEPTIONS.**

7       The following provisions shall take effect on the date  
8   of the enactment of this Act:

9           (1) Section 303 and the amendments made in  
10   that section.

11          (2) Section 305.

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